

Marc V. Kalagian  
Attorney at Law: 4460  
Law Offices of Rohlfiing & Kalagian, LLP  
211 East Ocean Boulevard, Suite 420  
Long Beach, CA 90802  
Tel.: (562)437-7006  
Fax: (562)432-2935  
E-mail: rohlfiing.kalagian@rksslaw.com

Attorneys for Plaintiff  
Michael J. Boggan

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

MICHAEL J. BOGGAN,

Plaintiff,

vs.

CAROLYN W. COLVIN, Acting  
Commissioner of Social Security,

Defendant.

) Case No.: 2:13-cv-1687-RFB-VCF  
)  
) STIPULATION FOR THE AWARD  
) AND PAYMENT OF ATTORNEY  
) FEES AND EXPENSES PURSUANT  
) TO THE EQUAL ACCESS TO  
) JUSTICE ACT, 28 U.S.C. § 2412(d)

TO THE HONORABLE CAM FERENBACH, MAGISTRATE JUDGE OF  
THE DISTRICT COURT:

IT IS HEREBY STIPULATED by and between the parties through their undersigned counsel, subject to the approval of the Court, that Michael J. Boggan be awarded attorney fees and expenses in the amount of Three Thousand dollars (\$3,000.00) under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d). This amount represents compensation for all legal services rendered on behalf of Plaintiff by counsel in connection with this civil action, in accordance with 28 U.S.C. §§ 1920; 2412(d).

1 After the Court issues an order for EAJA fees to Michael J. Boggan, the  
2 government will consider the matter of Michael J. Boggan's assignment of EAJA  
3 fees to Marc V. Kalagian. The retainer agreement containing the assignment is  
4 attached as exhibit 1. Pursuant to *Astrue v. Ratliff*, 130 S.Ct. 2521, 2529 (2010),  
5 the ability to honor the assignment will depend on whether the fees are subject to  
6 any offset allowed under the United States Department of the Treasury's Offset  
7 Program. After the order for EAJA fees is entered, the government will determine  
8 whether they are subject to any offset.

9 Fees shall be made payable to Michael J. Boggan, but if the Department of  
10 the Treasury determines that Michael J. Boggan does not owe a federal debt, then  
11 the government shall cause the payment of fees, expenses and costs to be made  
12 directly to Law Offices of Rohlfing & Kalagian, LLP, pursuant to the assignment  
13 executed by Michael J. Boggan. *United States v. \$186,416.00*, 722 F.3d 1173,  
14 1176 (9th Cir. 2013) (*\$186,416.00 II*) (ordering fees paid to counsel because of an  
15 assignment that did not interfere with a raised superior lien).<sup>1</sup> Any payments made  
16 shall be delivered to Marc V. Kalagian.

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19 <sup>1</sup> The Commissioner does not stipulate to the citation of *\$186,416.00 II*, and will  
20 not participate in representing to this Court that it carries legal import in these  
21 proceedings. *\$186,416 II* involved a different statute and very different factual  
22 circumstances than those presented here, or in other Social Security cases.  
23 Because the parties have agreed to the payment of EAJA fees, and the amount, and  
24 to avoid motion practice solely related to Plaintiff's citation, the Commissioner  
25 agrees to this stipulation. The Commissioner reserves the right to challenge the  
26 applicability of *\$186,416 II* to any Social Security case, and this Stipulation should  
not be construed as a waiver of such reservation.

Michael J. Boggan contends that *U.S. v. \$186,416.00 in U.S. Currency*, 642 F.3d  
753, 757 (9th Cir. 2011) (*\$186,416.00 I*) held that there is no functional difference  
between the CAFRA and EAJA in terms of "ownership" of the fee.

1           This stipulation constitutes a compromise settlement of Michael J. Boggan's  
2 request for EAJA attorney fees, and does not constitute an admission of liability on  
3 the part of Defendant under the EAJA or otherwise. Payment of the agreed amount  
4 shall constitute a complete release from, and bar to, any and all claims that Michael  
5 J. Boggan and/or Marc V. Kalagian including Law Offices of Rohlfing &  
6 Kalagian, LLP may have relating to EAJA attorney fees in connection with this  
7 action.

8           This award is without prejudice to the rights of Marc V. Kalagian and/or the  
9 Law Offices of Rohlfing & Kalagian, LLP to seek Social Security Act attorney  
10 fees under 42 U.S.C. § 406(b), subject to the savings clause provisions of the  
11 EAJA.

12 DATE: January 26, 2015

Respectfully submitted,

LAW OFFICES OF ROHLFING & KALAGIAN,

*/s/ Marc V. Kalagian*

BY: \_\_\_\_\_

Marc V. Kalagian

Attorney for plaintiff Michael J. Boggan

17 DATED: January 26, 2015

DANIEL G. BOGDEN  
United States Attorney

*/s/ Esther Kim*

BY: \_\_\_\_\_

Esther Kim

Special Assistant United States Attorney  
Attorneys for Defendant Carolyn W. Colvin,  
Acting Commissioner of Social Security  
(Per e-mail authorization)

**CERTIFICATE OF SERVICE  
FOR CASE NUMBER 2:13-CV-1687-RFB-VCF**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for this court by using the CM/ECF system on February 2, 2015.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system, except the plaintiff served herewith by mail.

*/s/ Marc V. Kalagian*

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Marc V. Kalagian  
Attorneys for Plaintiff

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MICHAEL J. BOGGAN,

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vs.

CAROLYN W. COLVIN, Acting  
Commissioner of Social Security,

Defendant

) Case No.: 2:13-cv-1687-RFB-VCF

) {PROPOSED} ORDER AWARDING  
) EQUAL ACCESS TO JUSTICE ACT  
) ATTORNEY FEES AND EXPENSES  
) PURSUANT TO 28 U.S.C. § 2412(d)

Based upon the parties' Stipulation for the Award and Payment of Equal  
Access to Justice Act Fees, Costs, and Expenses:

IT IS ORDERED that fees and expenses in the amount of \$3,000.00 as  
authorized by 28 U.S.C. § 2412, be awarded subject to the terms of the  
Stipulation. DATE: February 9, 2015

  
THE HONORABLE CAM FERENBACH  
UNITED STATES MAGISTRATE JUDGE